

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
  
FOR THE MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY  
REHABILITATION REVIEW PANEL

In the Matter of the QRC  
Registration of David M. Scorse

**FINDINGS OF FACT,**  
**CONCLUSIONS OF LAW,**  
**AND RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Steve M. Mihalchick at 9:30 a.m. on May 24, 1995, at the Alworth Building, Duluth, Minnesota. The hearing record remained open for the submission of posthearing briefs. The record closed on July 3, 1995, the date of receipt of the last posthearing submission.

Rory H. Foley, Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, Minnesota 551015-2127, appeared on behalf of the Minnesota Department of Labor and Industry, Rehabilitation Review Panel. Michael Haag, Grasswell, Magie, Andresen, Haag, & Paciotti, 1000 Alworth Building, P.O. Box 745, Duluth, Minnesota 55801, appeared on behalf of Appellant, David M. Scorse.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Rehabilitation Review Panel shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Panel. Exceptions to this Report, if any, shall be filed with Joseph Sweere, Chair, Rehabilitation Review Panel, 443 Lafayette Road, St. Paul, Minnesota 55155.

**STATEMENT OF THE ISSUES**

The issues to be determined in this proceeding are: 1) whether the false statements made in the Appellant's registration application to be a qualified rehabilitation consultant ("QRC") are a basis to revoke that certification; 2) whether the requirements for QRCs apply when the QRC is working as a disability case manager; 3) whether Appellant charged fees in excess of the maximum allowable amount; 4) whether Appellant engaged in claims adjustment activity; 5) whether Appellant engaged in conduct demonstrating a willful or careless disregard for the health, welfare, or safety of a client; and 6) whether adverse action is justified against the Appellant's QRC registration.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

## **FINDINGS OF FACT**

1. David M. Scorse, the Appellant herein, executed a notarized application for registration with the Department of Labor and Industry (DOLI) as a QRC on December 29, 1988. Exhibit 6. The application identified Scorse's educational background as a Bachelor of Arts in Psychology and a Master of Science in Educational Psychology (Special Education) from California State University at Fullerton; and a doctoral degree in education (Ed.D.) in special education counselling from Brigham Young University. The application form contains the statement: "I understand that any omission or misrepresentation may result in rejection or revocation of registration." *Id.* Appellant identified his employer as DMS and Associates (DMS). Appellant is the owner of DMS. Appellant sent a letter with his application stating that his academic transcripts from California State University were attached but the transcript from Brigham Young University had not yet arrived. Exhibit 3. The letter requested that the application be granted since Appellant's transcripts met the educational requirements for registration.

2. Upon approval of Appellant's application by the DOLI, Appellant sent out a letter to insurance carriers on DMS stationery. That letter advised of Appellant's status as a QRC and was signed Dr. David M. Scorse, Ed.D., QRC 184, Psychologist, Rehabilitation Consultant.

3. A QRC develops and manages a plan of rehabilitation to return an injured worker to suitable employment in a timely manner. A disability case manager is a rehabilitation professional performing services similar to those of a QRC at the request of an employer or insurer. Disability case managers are employed voluntarily by employers or insurers to resolve matters before QRC services are required. Eighty-seven percent of disability case managers are QRCs. There is no requirement that only QRCs perform disability case management.

4. The only testing normally administered to injured workers by QRCs or disability case managers is for vocational preference and aptitude and for educational level. Under normal practice QRCs and disability case managers do not administer the Minnesota Multiphasic Personality Inventory (MMPI) or other psychological tests.

5. Minn. R. 5220.1400, subp. 2, describes the credentials required for QRC registration, which include certification by a national organization. Subpart 2A sets forth the requirements under which the Appellant sought QRC registration:

a baccalaureate degree, together with certification by the Board of Rehabilitation Certification as a certified rehabilitation counselor or a certified insurance rehabilitation specialist.

6. On October 1, 1992, an hourly rate cap of \$65.00 for rehabilitation providers imposed by Minn. R. 5220.1900, subp. 1c, became effective. Under that rule, travel and waiting time is capped at one-half the hourly professional rate. For cases open thirty-nine weeks (or more) or cases that reach a total reimbursement cost of \$3,500 or more from all providers, the professional rate must be reduced by \$10.00 per hour. Minn.

Rule 5220.1900, subp. 1f. On October 16, 1992, the Department put on an educational seminar for QRCs. This seminar fully discussed the changes to the fee structure for QRCs. Appellant registered as an attendee at that seminar as Doctor Scorse. That attendance was verified for the purpose of continuing education requirements for Appellant.

7. On October 1, 1993, the QRC maximum hourly rate was increased to \$67.60 by operation of Minn. R. 5220.1900, subp. 1b.

8. On October 1, 1994, the QRC maximum hourly rate was increased to \$68.72, by operation of Minn. R. 5220.1900, subp. 1b. At the end of 1994, DOLI began a review of rates on file to determine if the rates on file from QRCs exceeded the maximum allowable fee. It found that some of DMS's rates on file exceeded the maximum allowable amount.

9. DMS registered its hourly rates with DOLI as \$60.00 per hour in 1988 and 1990, \$65.00 per hour in 1991; \$70.00 per hour in 1992; \$65.00 per hour in 1993; \$70.00 per hour in 1994; and \$68.72 in 1995. Exhibit 30.

10. On April 11, 1994, DMS submitted an invoice for client B.H. which billed the Special Compensation Fund for \$58 per hour for vocational rehabilitation professional services and \$34 per hour for travel. The costs incurred for B.H. to the date of the invoice for DMS was \$13,108.17. Appellant billed for receiving client's cash flow data on February 2, 1994, and transmitting client's travel mileage to the Special Compensation Fund on March 3, 1994. Exhibit 13. These activities are claims adjustment activities. The Special Compensation Fund is, in effect, an insurance company. The Special Compensation Fund is distinct from the Department.

11. On April 24, 1994, DMS submitted an invoice for client J.G. which billed the Special Compensation Fund for \$75 per hour for vocational rehabilitation professional services and \$70 per hour for travel. The costs incurred for J.G. to the date of the invoice for DMS was \$3,442.72. Exhibit 12a.

12. On May 12, 1994, DMS submitted an invoice for client B.J. which billed the Special Compensation Fund for \$75 per hour for disability case management professional services and \$70 per hour for travel. The costs incurred for B.J. to the date of the invoice for DMS was \$4,674.26. Exhibit 14. On May 11-12, 1994, Appellant discussed with B.J. the Special Fund's decision not to pursue job search activity and suggested B.J. retain an attorney to begin settlement discussions. This activity is claims adjustment. In his report on these meetings, Appellant described the decision as coming from "DOLI" and "the Department."

13. On June 8, 1994, DMS submitted an invoice for client D.B. which billed the Special Compensation Fund for \$75.00 per hour for vocational rehabilitation professional services and \$70.00 per hour for travel. The costs incurred to the date of the invoice for DMS was 1,016.03. On June 9, 1994, Appellant took recorded statements from D.B. and D.B.'s employers at the request of, and for the use of, the

claims adjuster of the Special Compensation Fund. Taking recorded statements is a claims adjustment activity. On September 30, 1994, DMS submitted an invoice for client D.B. which billed the Special Compensation Fund for \$75.00 per hour for professional services and \$70.00 per hour for travel. The costs incurred to the date of the invoice for DMS was 5,565.60. On October 18, 1994, DMS submitted an invoice for client D.B. which billed the Special Compensation Fund for \$75.00 per hour for professional services and \$70.00 per hour for travel. The costs incurred to the date of the invoice for DMS was 6,702.51. On February 13, 1995, DMS submitted an invoice for client D.B. which billed the Special Compensation Fund for \$68.72 per hour for professional services and \$34.36 per hour for travel. The costs listed on the invoice as incurred for D.B. to the date of the invoice for DMS was \$1,521.24. Exhibit 11.

14. On July 31, 1994, DMS submitted an invoice for client D.C. (identified in the Notice of Hearing as D.R.) which billed the Special Compensation Fund for \$70 per hour for vocational rehabilitation professional services and \$35 per hour for travel. The costs incurred for D.C. to the date of the invoice for DMS was \$4,737.67. DMS charged three hours for administration of the MMPI and 2.5 hours for scoring the MMPI and preparing a report. Appellant billed for arranging motel rooms for D.C. Exhibit 12. Arranging lodging is a claims adjustment activity.

15. On August 8, 1994, DMS submitted an invoice for client J.W. which billed the Special Compensation Fund for \$75 per hour for disability case management professional services and \$70 per hour for travel. The costs incurred for J.W. to the date of the invoice for DMS was \$4,138.96. Exhibit 24. Appellant billed for arranging lodging for J.W. Arranging for client lodging is claims adjustment activity. Appellant billed the Special Compensation Fund for one hour of time identified as "MMPI Interpretation."

16. On October 4, 1994, Appellant executed a form for amending the rehabilitation plan of client J.K. changing the QRC from the Worker's Compensation Division of DOLI to Appellant. Appellant signed the document as Dr. David Scorse. Exhibit 15.

17. On November 7, 1994, DMS submitted an invoice for client R.M. which billed the Special Compensation Fund for \$60 per hour for vocational rehabilitation professional services and purported to charge \$70 per hour for travel. The actual cost billed showed a rate of \$30 per hour. The costs incurred in disability case management services for R.M. to the date of the invoice for DMS was \$12,058.41. Previous disability case management services for J.L. had been billed by other providers in the amount of \$194.70. Exhibit 18. On January 31, 1995, DMS submitted an invoice for client R.M. which billed the Special Compensation Fund for \$62 per hour for professional services and \$35 per hour for travel.

18. On December 27, 1994, DMS submitted an invoice for client J.L. which billed the Special Compensation Fund for \$75 per hour for disability case management professional services and \$70 per hour for travel. The costs incurred in disability case management services for J.L. to the date of the invoice for DMS was \$3,267.75.

Previous disability case management services for J.L. had been billed by other providers in the amount of \$10,750.00. Exhibit 17. The invoice billed for a conference with one of J.L.'s physicians where Appellant discussed the client's reaching maximum medical improvement (MMI). If MMI is reached, a client ceases to be eligible for ongoing medical treatment under the workers' compensation system. Such discussions are not within the scope of practice of QRCs.

19. On January 15, 1995, DMS submitted an invoice for client J.L. which billed the Special Compensation Fund for \$75 per hour for professional services and \$70 per hour for travel. The costs incurred in disability case management services for J.L. to the date of the invoice for DMS was \$4,762.85. Previous disability case management services for J.L. had been billed by other providers in the amount of \$10,750.00. Exhibit 17. The invoice billed for a meeting and a conference with an investigator hired by the Special Compensation Fund. The meeting and conference are claims adjustment activities.

20. On January 28, 1995, DMS submitted an invoice for client J.L. which billed the Special Compensation Fund for \$75 per hour for professional services and \$70 per hour for travel. The costs incurred in disability case management services for J.L. to the date of the invoice for DMS was \$5,672.99. Previous disability case management services for J.L. had been billed by other providers in the amount of \$10,750.00. Exhibit 17. The invoice billed for a meeting and a conference with an investigator hired by the Special Compensation Fund. The meeting and conference are claims adjustment activities.

21. On January 31, 1995, DMS submitted an invoice for client J.K. which billed the Special Compensation Fund for \$70 per hour for vocational rehabilitation professional services and \$35 per hour for travel. The costs incurred for J.K. to the date of the invoice for DMS was \$3,360.00. Exhibit 15. The invoice billed for administration of an MMPI and blind interpretation on November 2, 1994. A blind interpretation of the MMPI was done by Dr. Marcus P. Desmonde, Licensed Psychologist, on November 4, 1994. The invoice billed for a meeting on November 9, 1994, with Ross Williams, an investigator hired by the Special Compensation Fund. The invoice billed for verification, on December 15, 1994, of J.K.'s mileage. Appellant discussed the mileage claims with J.K. and J.K. agreed to revise his claims downward. The meeting with an investigator and verification of mileage are claims adjustment activities.

22. On January 31, 1995, DMS submitted an invoice for client S.M. which billed the Special Compensation Fund for \$68.72 per hour for vocational rehabilitation professional services and \$34.36 per hour for travel. The costs incurred for S.M. to the date of the invoice for DMS was \$8,067.71. Exhibit 19. Previous vocational rehabilitation services for S.M. had been billed by other providers in the amount of \$300.00. On February 21, 1995, DMS submitted an invoice for client S.M. which billed the Special Compensation Fund for \$68.72 per hour for vocational rehabilitation professional services and \$34.36 per hour for travel. Exhibit 19.

23. On February 14, 1995, DMS submitted an invoice for client J.K. which billed the Special Compensation Fund for \$68.72 per hour for professional services and \$34.36 per hour for travel. The costs incurred for J.K. to the date of the invoice for DMS was \$3,773.67. Exhibit 15.

24. On February 19, 1995, DMS submitted an invoice for client J.K. which billed the Special Compensation Fund for \$68.72 per hour for professional services and \$34.36 per hour for travel. The costs incurred for J.K. to the date of the invoice for DMS was \$4,191.13. Exhibit 15.

25. On February 14, 1995, DMS submitted an invoice for client C.B. which billed the Special Compensation Fund for \$68.72 per hour for vocational rehabilitation professional services and \$34.36 per hour for travel. The costs incurred for C.B. to the date of the invoice for DMS was \$2,518.27. Exhibit 10. Appellant administered an MMPI to C.B. and a blind interpretation was performed by Dr. Desmonde.

26. On February 16, 1995, DMS submitted an invoice for client M.K. which billed the Special Compensation Fund for \$68.72 per hour for vocational rehabilitation professional services and \$34.36 per hour for travel. The costs incurred for M.K. to the date of the invoice for DMS was \$3,084.78. Exhibit 16. On October 4, 1994, and December 15, 1994, Appellant submitted client mileage claims for reimbursement by the Special Compensation Fund. This is a claims adjustment activity.

27. On February 21, 1995, DMS submitted an invoice for client D.M. which billed the Special Compensation Fund for \$68.72 per hour for vocational rehabilitation professional services and \$34.36 per hour for travel. The costs incurred for D.M. to the date of the invoice for DMS was \$3,994.34. Exhibit 20. Previous vocational rehabilitation services for D.M. had been billed by other providers in the amount of \$1,500.00.

28. On February 28, 1995, DMS submitted an invoice for client D.P. which billed the Special Compensation Fund for \$68.72 per hour for disability case management professional services and \$34.36 per hour for travel. The costs incurred for D.P. to the date of the invoice for DMS was \$5,738.82. Exhibit 21.

29. On February 28, 1995, DMS submitted an invoice for client F.V. which billed the Special Compensation Fund for \$68.72 per hour for professional services and \$34.36 per hour for travel. The costs incurred for F.V. to the date of the invoice for DMS was \$3,487.24. Exhibit 23. Appellant participated in client/team meeting of the client's psychiatric team. Such participation is not within the scope of QRC practice.

30. Appellant has never attended Brigham Young University and does not hold any doctoral degree. Appellant has never been licensed in Minnesota as a psychologist.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

## **CONCLUSIONS OF LAW**

1. The Administrative Law Judge and the Rehabilitation Review Panel have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 176.102, subd. 3 (1992). The panel has complied with all substantive and procedural requirements.

2. David M. Scorse obtained his registration as a QRC through fraudulent statements on his application in violation of Minn. R. 5220.1801, subp. 9.A.

3. The statutes and rules governing QRCs apply to registered QRCs acting within the scope of their practice whether the services performed are characterized as vocational rehabilitation services or disability case management services.

4. Services for clients B.H., J.G., D.B., D.C., R.M., J.K., S.M., C.B., M.K., and D.M. that were provided by Appellant within the scope of QRC practice are vocational rehabilitation services. Services for clients B.J., J.W., J.L., D.P., and F.V. that were provided by Appellant within the scope of QRC practice are disability case management services.

5. Appellant charged in excess of the maximum permitted rate for services and travel provided to clients B.H., J.G., D.B., D.C., and J.K. in violation of Minn. R. 5220.1900, subp. 1c. Appellant's original billing rate was appropriate for clients R.M., S.M., and D.M., but Appellant neglected to properly deduct \$10.00 per hour due to the total cost of amount before billing the State Compensation Fund as required by Minn. R. 5220.1900, subp. 1f. Appellant's invoices for D.B., from September 30, 1994, failed to make the required \$10.00 per hour reduction.

6. The rule limits on fees only apply to vocational rehabilitation services. There is no limit on the amount a QRC can charge for disability case management services. Appellant did not charge fees in excess of the maximum permitted rate for services and travel provided to clients B.J., J.W., J.L., C.B., M.K., D.P., and F.V.

7. Appellant performed claims adjustment services in addition to vocational rehabilitation or disability case management services in respect to clients B.H., B.J., D.B., D.C., J.L., J.K., and M.K. in violation of Minn. R. 5220.1801, subp. 8.

8. Appellant fraudulently identified himself as a psychologist in his practice as a QRC. Appellant's fraudulent identification violates the prohibition against misrepresentation by rehabilitation providers of their credentials in Minn. R. 5220.1805.B. Appellant's fraudulent identification of himself as a psychologist is "engaging in conduct likely to deceive, defraud, or harm the public" and demonstrates a "willful or careless disregard for the health, welfare, or safety of a rehabilitation client" as prohibited by Minn. R. 5220.1801, subp. 9.F. Appellant's fraudulent representation as a psychologist inaccurately represented his level of skill and competency in violation of Minn. R. 1801, subp. 10.

9. The Rehabilitation Review Panel lacks jurisdiction to discipline Appellant for practicing psychology and holding forth as a psychologist without proper licensure under

Minn. Stat. § 148.97, subd. 1. Jurisdiction to impose that discipline rests solely with the Board of Psychology. Appellant's violations of Minn. R. 5220.1805 and 5220.1801, subp. 9.F. relate to his registration as a QRC, and the Rehabilitation Review Panel has jurisdiction to take disciplinary action for those violations.

10. The Department has not demonstrated that Appellant's actions regarding MMPI administration violate any statute or rule regarding Appellant's QRC registration.

Based upon the foregoing Conclusions of Law, and for the reasons set forth in the attached Memorandum, the Administrative Law Judge makes the following:

**RECOMMENDATION**

IT IS RESPECTFULLY RECOMMENDED that the Rehabilitation Review Panel take disciplinary action against the QRC registration of David M. Scorse.

Dated this 2nd day of August, 1995.

\_\_\_\_\_/s/\_\_\_\_\_

STEVE M. MIHALCHICK  
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped, No Transcript Prepared.



## **MEMORANDUM**

Appellant maintains that the fraudulent statements in his application for registration as a QRC should not be a ground for discipline, since he actually does have an adequate educational background to have been registered as a QRC. This argument overlooks the role played by registration with DOLI as a QRC. That registration places the imprimatur of the State on the activities of the registrant. Standards of education and experience are expected to be met and review of QRC conduct is assumed. To list a degree on an application for registration creates documentation, maintained by the State, that such a degree exists. The letter accompanying Appellant's application demonstrates that Appellant knew of his misrepresentation on his application. The letter was designed to assuage any suspicions that Department staff may have had and allowed Appellant to avoid ever producing evidence of that degree. The letter clearly manifests fraudulent intent on Appellant's part in claiming the degree.

The fraud committed by Appellant goes beyond claiming a degree, however. He identified himself as a psychologist throughout his practice. Appellant has never been licensed as a psychologist in Minnesota. Despite the lack of licensure, Appellant has insinuated himself into situations where licensure as a psychologist is required. The rule prohibitions against harming the public and misrepresenting a QRC's credentials cover just those situations. DOLI may appropriately take disciplinary action, within the scope of the QRC rules, against Appellant for misrepresenting that he was a psychologist.

Minn. R. 5220.1900, subp. 1c, limits the hourly rate for "rehabilitation services" that a QRC can charge. The rate limitation relates to the rehabilitation services that are required to be provided to an injured worker under Minn. Stat. § 176.102. Disability case management services are outside the statutorily required services and thus, the rule limitations on fees do not apply. The fee limitations are designed to provide some form of check on the fee which an employer or insurer is required to pay. For fees which are freely bargained with an employer or insurer, there is no public interest in setting a fee limitation.

The invoices submitted by Appellant to the Special Compensation Fund demonstrate that Appellant billed more than the permitted maximum hourly rate on vocational rehabilitation services on a number of occasions. Appellant cannot claim ignorance of these limits, since he attended a Department seminar which discussed these limits, in detail. In some instances, Appellant billed at an hourly rate higher than that allowed by rule for professional services. In other instances Appellant billed for travel at a rate in excess of the permitted hourly rate. In a number of instances, Appellant failed to reduce his hourly fee by \$10.00 where the total disability case management services or vocational rehabilitation services came to \$3,500 or more.

QRCs are prohibited from conducting claims adjustment by Minn. R. 5220.1801, subp. 8. The rule prohibits specific conduct by QRCs for the protection of injured workers. This prohibition applies whether the QRC is performing rehabilitation services

or disability case management. There would be no such prohibition if the person was not registered as a QRC and providing disability case management. But in order to insure the integrity of QRC registration, every QRC must adhere to the standards of professional conduct when any services are provided to an injured worker. The rules regarding professional conduct are not suspended when a QRC provides disability case management services.

In one instance, Appellant took statements from persons, including the injured worker he was to be assisting. In another instance, Appellant had meetings with an investigator to assist the investigator in uncovering information to use to deny the injured worker further benefits. These actions are claims adjustment activity and they establish a dual role for the QRC. The dual role is exactly the reason why the rule prohibits claim adjustment activity. In claims adjustment, the interest of the client is often in direct opposition to the interest of the adjuster. In the foregoing instances, Appellant was used by the Special Compensation Fund as a claims adjuster in a manner inconsistent with the interest of the injured workers who should have been Appellant's clients. The professional standards required of QRCs demand that the interest of the injured worker be held as primary. Actions that establish a dual role for the QRC are prohibited. Arranging lodging is another example of claims adjustment activity that Appellant performed. Action against Appellant's QRC registration is appropriate on the basis of Appellant's engaging in claims adjustment activity in violation of Minn. R. 5220.1801, subp. 8.

The Department asserted that Appellant's actions regarding administering MMPIs to injured workers violate Minn. R. 1800.1801, subps. 9.F., and 10, and Minn. R. 5220.1805 B. There is no testimony in the record as to what is appropriate for persons not licensed in psychology to do regarding the administration of MMPIs. Absent such evidence, the Judge cannot determine whether Appellant's administration of MMPIs violates any rule or standard of conduct. While some of Appellant's billing invoices suggest that he did more than offer some clients the MMPI form, this evidence does not demonstrate any rule violation by a preponderance of the evidence.

The Department has demonstrated by a preponderance of the evidence that Appellant has violated the standards for billing on vocational rehabilitation services, has conducted claims adjustment activities, has acted with willful or careless disregard to the welfare of his clients, has misrepresented his credentials, and falsified his application to register as a QRC. The evidence is well beyond the standard required to take action against a professional license. In Re Wang, 441 N.W.2d 488 (Minn. 1989). The Judge recommends that adverse action be taken against Appellant's QRC registration.

S.M.M.